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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/715,385      | 11/16/2000  | Nicholas J. Rush     |                     | 8560             |

20350 7590 12/15/2003

TOWNSEND AND TOWNSEND AND CREW, LLP  
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EIGHTH FLOOR  
SAN FRANCISCO, CA 94111-3834

EXAMINER

COBURN, CORBETT B

|          |              |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

3714

DATE MAILED: 12/15/2003

23

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/715,385

Applicant(s)

RUSH ET AL.

Examiner

Corbett B. Coburn

Art Unit

3714

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. On page 1 of Applicant's response, Applicant states, "Amendments to the claims are reflected in the listing of claims which begins on page 2 of this paper." While the pending claims are listed, Applicant does not appear to have submitted any amendments. Examiner will treat this response as a Request for Reconsideration".

### ***Response to Arguments***

2. Applicant's arguments filed 1 December 2003 have been fully considered but they are not persuasive.

3. Applicant argues that Weingardt does not teach that the total value of all the tokens is derived from a source other than the players. Examiner disagrees. Weingardt teaches that the casino seeds the initial pool. Thus the total value of the tokens in that pool is derived from the casino – not the players. The fact that the casino may, or may not, recover this money from the players does not alter the fact that the money is provided by the casino. Nor does Weingardt's teaching that subsequent pools are funded by the players obviate the teaching that the initial pool is entirely funded by the casino.

4. Applicant argues that the combination of Weingardt and Walker fails to teach statistically positive token return – emphasizing the word "token". Walker clearly teaches a guaranteed payout in a lottery that is greater than the amount spent to purchase the lottery ticket. Money is merely a token. A dollar bill has very little, if any, intrinsic value. It is token that is used as a medium of exchange. By teaching a game in which the player is guaranteed to get more of these tokens we call dollars than the player used to buy the lottery ticket, Walker clearly teaches a

Art Unit: 3714

statistically positive token return. Examiner agrees with Applicant that Walker does not teach a statistically positive return of lottery tickets, but lottery tickets are not tokens – money is.

5. Applicant argues that a guaranteed win feature is not the same as a statistically positive token return. Applicant points out that individual players may actually lose money under Applicant's invention. Be that as it may, Walker teaches that every player will receive more tokens (i.e., money) than he put in. This is a statistically positive token return.

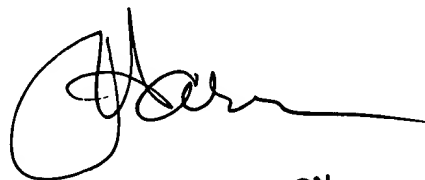
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Corbett B. Coburn whose telephone number is (703) 305-3319. The examiner can normally be reached on 8-5:30, Monday-Friday, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on (703) 308-1806. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

  
cbc

  
JESSICA HARRISON  
PRIMARY EXAMINER